

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3645-02
Bill No.: SB 836
Subject: Alcohol; Courts; Crimes and Punishment; Drunk Driving/Boating; Highway Patrol; Law Enforcement Officers and Agencies; Driver's Licenses
Type: Original
Date: February 1, 2010

Bill Summary: The proposal specifies that courts may establish DWI dockets or courts and modifies other criminal and administrative procedures for certain intoxication-related offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(More than \$2,510,258)	(More than \$3,048,051)	(More than \$3,127,476)
Total Estimated Net Effect on General Revenue Fund	(More than \$2,510,258)	(More than \$3,048,051)	(More than \$3,127,476)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Highway	(\$44,280)	\$0	\$0
Various State Funds	\$1,898,248	\$2,277,898	\$2,277,898
Total Estimated Net Effect on <u>Other</u> State Funds	\$1,853,968	\$2,277,898	\$2,277,898

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	41	41	41
Total Estimated Net Effect on FTE	41	41	41

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(\$253,224)	(\$303,686)	(\$303,868)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health, Department of Social Services, Boone County Sheriff's Department, Springfield Police Department, and the City of Centralia** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Department of Public Safety – Director's Office** assume any costs associated with this proposal can be absorbed.

Officials from the **Office of State Courts Administrator** state the proposed legislation would have significant financial impact on both the circuit and municipal courts and would require cases to be transferred or filed with the circuit courts.

The following cases would be required to be transferred or filed with the circuit courts:

- 1) Any driving while intoxicated offenses with prior intoxicated-related traffic offenses or alcohol-related contacts
- 2) Any driving while intoxicated offenses with blood alcohol content (BAC) of .15 or more
- 3) Any offense involving the refusal to submit to a chemical test

Based on these additional filings, CTS estimates 16,200 cases will be added to the circuit court caseload, an increase of approximately 13%. According to CTS judicial and clerical weighted workload studies, it takes approximately 24 minutes of judicial time to process a misdemeanor case and 225 minutes of clerical time. The increase in workload would require 5 additional associate circuit judges and 36 court clerks.

The personnel cost for an individual associate circuit judge and court clerk is as follows:

Associate Circuit Court Judge:	\$109,366 per year, plus fringes
Court Clerk II:	\$ 27,564 per year, plus fringes

The total annual cost for this legislation would be \$1,539,134, plus fringes, and 41 FTE.

In addition, transferring approximately 10,603 cases (with a BAC of .15 or more and filings with a prior offender) to circuit courts would result in a loss to municipality general revenue of \$2,093,645 from associated fees, surcharges and fines.

ASSUMPTION (continued)

Each misdemeanor case will increase court costs from \$22.50 to \$104.50. The State (or statewide entities) would gain approximately \$4.2 million; the non-dedicated, general revenue portion of this would be \$132,325.

Oversight assumes approximately 44% of the remaining \$4,067,675 in court costs go to various county funds and 56% go to various state funds. For fiscal note purposes only, Oversight will allocate \$1,789,777 to Local Political Subdivisions and \$2,277,898 to Various State Funds. Oversight has adjusted the FY 2011 amounts to reflect 10 months.

Officials from the **Department of Transportation (MoDOT)** assume provisions in this bill may result in Missouri being considered out of compliance with Title 23 USC Section 164, which establishes minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.

Section 164 requires that in the case of a second offense, the driver: (1) be assigned no less than 30 days community service; or (2) no less than 5 days of imprisonment.

For a third or subsequent offense, Section 164 requires that the driver: (1) be assigned no less than 60 days community service; or (2) no less than 10 days of imprisonment.

However, this bill modifies the sentencing requirements for prior and persistent offenders so that they are required to either: (1) serve a minimum imprisonment sentence; or (2) perform the requisite community service; or (3) participate in a DWI court.

It is possible that by offering DWI court as an alternative to either mandatory imprisonment or community service, that this bill will place Missouri out of compliance with the Section 164 requirements.

MoDOT has contacted the National Highway Traffic Safety Administration (NHTSA) for their review of these provisions. If NHTSA determines that this change places Missouri out of compliance, Section 164 (b)(2) states that Missouri could have 3% of its federal-aid highway funds (apportioned under 23 USC 104(b)(1), (3) and (4)) reapportioned for Highway Safety programs.

ASSUMPTION (continued)

Oversight assumes the intent of the legislation is not to make the Department of Transportation (MoDOT) out of compliance with Title 23 USC Section 164 requirements. The MoDOT assumption that the proposal could jeopardize federal funding is speculative. Therefore, Oversight is reflecting no fiscal impact to MoDOT for this fiscal note. If MoDOT is found to be out of compliance with Title 23 USC Section 164 requirements, then the proposal could result in a loss of federal funding.

Officials from the **Department of Corrections (DOC)** state the bill proposes to specify that courts may establish DWI dockets or courts and modifies other criminal and administrative procedure for certain intoxication-related offenses. The penalty provision component of this bill resulting in potential fiscal impact for DOC, is for up to a class D felony.

Changing the fact that DWI cases are transferred from municipal to state court for prior offenders will cause a fiscal impact for the DOC. These offenders would now be supervised or incarcerated by the DOC. Additional treatment sources could also be needed to meet the growing number of referrals.

DOC assumes they cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY09 average of \$16.04 per offender, per day or an annual cost of \$5,855 per inmate) or through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender, per day or an annual cost of \$1,354 per offender).

At this time, the DOC is unable to determine the exact number of people who would be convicted under the provisions of this bill and whether or not additional inmate beds may be required as a consequence of passage of this proposal. The cumulative effect of various new legislation, if adopted as statute may require institutional facility expansion.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eighteen (18) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. DOC estimates potential costs could be in excess of \$100,000 per year.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume the following provisions could fiscally impact DOR:

Section 302.309.3(1): Allows a commissioner operating under section 478.007 to grant limited driving privileges (LDP).

Section 302.309.3(9): Allows a DWI court established pursuant to section 478.007 to grant LDPs when the person participates in the DWI program. The LDP may be granted for an AD revocation or 5-year denial during the 'hard walk' time unless the person is otherwise ineligible for the LDP due to other provisions of law. DOR may have an increase in court ordered LDPs.

Section 478.007.1-.2: Establishes a DWI court and the types of cases it can dispose of.

Section 577.010.2: Changes the required term of imprisonment when a person is convicted of a DWI with a blood alcohol content of .15% to .20% and those with a blood alcohol content of greater than .20%. Language added to not allow for a suspended imposition of sentence for a first offense of a DWI with a blood alcohol level of .15% or more. DOR may see an increase of DWI convictions to add to the driving record.

Section 577.012.3: Same changes as in section 577.010.2, DOR may see an increase of BAC convictions to add to the driving record.

Section 577.023.6: Removes 'municipal' court, increases imprisonment times, and includes the DWI court as a condition for parole or probation.

Section 577.023.7: Adds language that when a prior offender, persistent offender, aggravated offender, or chronic offender is found and the charge has been filed in a municipal court, the court must transfer the case to the appropriate circuit court.

Section 577.041.3: Increases the revocation time period for a chemical refusal from 1 year to 2 years. DOR will be required to modify programs to increase the revocation period.

Section 577.041.7: Made correction to the subdivision number of section 302.010 for SATOP.

Section 577.041.11: Increases the revocation time period for a chemical refusal from 1 year to 2 years and the time period for financial responsibility from 2 years to 3 years. DOR will be required to modify programs to increase these time periods.

ASSUMPTION (continued)

Section 577.700.1-.3: Rules for municipal courts, when the court determines that a person has been charged with DWI or BAC and the blood alcohol level is .15% or greater, or has refused to submit to any tests as described in section 577.041, it shall transfer the case to the appropriate circuit court.

Section 577.725.1-.2: Rules for law enforcement, prosecutors, and courts to provide information regarding intoxicated-related traffic offenses to DWITS.

DOR assumes the following Administrative Impact:

Driver License Bureau

This proposed legislation requires:

- DOR to key court ordered LDPs that have been denied for an AD revocation or a 5-year denial, even if the 2-year hard walk has not been completed, when the person is participation in the DWI court program.
- DOR to add 1st offense DWI and BAC convictions to the record as the court is unable to grant an SIS when the blood alcohol content level is .15% or greater.
- Modifications to MODL programs pertaining to Chemical Refusal revocations. The revocation period is increased from 1 year to 2 years and the SR-22 requirement is increased from 2 years to 3 years.
- Requires the Chemical Refusal Notification to be revised.
- Forms changes in addition to the Chemical Refusal Notification.
- Testing modification to MODL programs.
- Website Changes.
- Procedure Changes.
- Training of Staff.

Driver License Bureau would incur the following costs to implement the law:

1 - Management Analysis Specialist II
Monthly Salary = \$3,854
80 hours of testing = \$1,927

ASSUMPTION (continued)

1 - Administrative Analyst

Monthly Salary = \$2,836

80 hours of testing = \$1,418

2 - Management Analysis Specialist I for forms and Internal Procedures development

40 hours at \$20.13 = \$805.20 x 2 = \$1,610.40

1 - Administrative Analyst III for web page updates

10 hours at \$21.79 = \$217.80

Total Driver License Bureau administrative costs are assumed to be \$5,173 in FY 2011.

OA-ITSD Information Technology

The DOR's response to a proposal similar to or identical to this one in a previous session indicated the department planned to absorb the administrative costs to implement the proposal. Due to budget constraints, reduction of staff and the limitations within the department's drivers license systems, changes cannot be made without significant impact to the department's resources and budget. Therefore, the IT portion of the fiscal impact is estimated with a level of effort valued at \$2,120. The value of the level of effort is calculated on 80 FTE hours.

Oversight assumes the DOR's internal implementation costs can be absorbed within existing resources. Oversight also assumes DOR OA-ITSD is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR OA-ITSD could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR OA-ITSD could request funding through the appropriation process.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)**, Traffic Division states that entry of data into the Driving While Intoxicated Tracking System (DWITS) is normally accomplished through manual entry into the system through a secure Internet connection. There would be no fiscal impact to the state with law enforcement agencies using this method. However, extractions of data into the DWITS from law enforcement agency records management systems (RMS) can be established. The MSHP's DWITS consultant indicated the cost for the MSHP to establish one extraction program from a single RMS could cost as much as \$13,000. Approximately 37 commercial vendors operate records management systems statewide along with several local systems not operated by a commercial vendor. The commercial vendors represent approximately 271 agencies. It is possible a single extract program for a specific vendor's RMS could be written that would work with all agencies using that vendor's RMS; however, there may be additional programming that would have to take place with some or all of a vendor's customers. The cost to test each participating vendor could be as much as \$13,000. If all 37 vendors choose to participate, the cost will be approximately \$481,000 (\$13,000 x 37 RMS). The MSHP assumes that everyone will choose to participate. It may be possible to use federal funds through the Missouri Department of Transportation's Highway Safety Division to fund these projects. However, for purposes of this fiscal note, the Patrol assumes that it would be Highway funded.

The Information Systems Division states that new reports would be required to gather the data received into DWITS and maintain regular accountability reports of alcohol-related arrest, charges, and dispositions. Development costs are estimated to be 220 hours at the current contract rate of \$82 per hour for a cost of \$18,040 (220 hours x \$82). In addition, new accountability reporting will be required per Section 577.725.2 as part of the reporting duties of the Missouri state highway patrol to agencies and offices informing them of their compliance or non-compliance. These development costs are estimated to be 320 hours at the current contract rate of \$82 per hour for a cost of \$26,240 (320 hours x \$82).

One-Time Expenditures

Consultant Fees (37 x \$13,000)	\$481,000
Consultant Fees (540 hours at \$82 per hour)	\$44,280
Total One-Time Costs	\$525,280

Oversight assumes the entry of data into the DWITS could continue to be accomplished through manual entry into the system through a secure Internet connection with no fiscal impact to the state. Therefore, Oversight assumes the MSHP would not incur the \$481,000 consultant fees to establish extraction programs.

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender (SPD)** state that in FY 2009, the State Public Defender System provided representation in 3,677 state Driving While Intoxicated cases and 5,413 Driving While Revoked cases. If these numbers increase by just 10%, the State Public Defender would require funds to contract out an additional 900 cases. At an average cost of \$375 per case, the additional costs would be \$337,500. SPD assumes they would incur additional costs of approximately \$337,500 per year as a result of the proposal.

Officials from **Cass County** assume an unknown fiscal impact, depending whether the county or judiciary funds the courts.

Oversight assumes the DWI dockets or courts would be funded through the judiciary, and assumes no local cost.

Officials from **St. Louis County** assume court costs would increase about \$6,000 due to the increased case load. The county costs would be slight and would cost approximately \$10,000.

Oversight assumes counties could absorb any increased costs due to increased case loads.

Officials from the Office of Prosecution Services, Office of the State Treasurer, Buchanan County Sheriff's Department, Clark County Sheriff's Department, Columbia Police Department, Independence Police Department, Jackson County Sheriff's Department, Jefferson City Police Department, Kansas City Police Department, Platte County Sheriff's Department, St. Charles Police Department, St. Joseph Police Department, St. Louis County Police Department, St. Louis Metropolitan Police Department, Various Missouri Cities, and Various Missouri Counties did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Income</u> – Office of State Courts Administrator			
Increase in court costs	\$110,270	\$132,325	\$132,325
<u>Costs</u> – Office of State Courts Administrator (CTS)			
Personal Services – Associate Circuit Judges (5 FTE)	(\$469,362)	(\$580,132)	(\$597,536)
Personal Services – Court Clerk II (36 FTE)	(\$851,728)	(\$1,052,735)	(\$1,084,317)
Fringe Benefits	(\$884,619)	(\$1,099,884)	(\$1,119,894)
Equipment and Expense	<u>(\$33,569)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs – CTS</u>	<u>(\$2,239,278)</u>	<u>(\$2,732,751)</u>	<u>(\$2,801,747)</u>
FTE Change – CTS	41 FTE	41 FTE	41 FTE
<u>Costs</u> – Department of Corrections			
Incarceration/probation costs	(More than \$100,000)	(More than \$100,0000)	(More than \$100,000)
<u>Costs</u> – Office of the State Public Defender			
Contract counsel	<u>(\$281,250)</u>	<u>(\$347,625)</u>	<u>(\$358,054)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(More than \$2,510,258)</u>	<u>(More than \$3,048,051)</u>	<u>(More than \$3,127,476)</u>
Estimated Net FTE Change for General Revenue Fund	41 FTE	41 FTE	41 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
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HIGHWAY FUND

<u>Costs</u> – Missouri State Highway Patrol Consultant fees	<u>(\$44,280)</u>	<u>\$0</u>	<u>\$0</u>
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ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>(\$44,280)</u>	<u>\$0</u>	<u>\$0</u>
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VARIOUS STATE FUNDS

<u>Revenues</u> – Increased circuit court fees, surcharges, and fines	<u>\$1,898,248</u>	<u>\$2,277,898</u>	<u>\$2,277,898</u>
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ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>\$1,898,248</u>	<u>\$2,277,898</u>	<u>\$2,277,898</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
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LOCAL GOVERNMENT

<u>Revenues</u> – Counties Court fees, surcharges, and fines	\$1,491,480	\$1,789,777	\$1,789,777
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<u>Losses</u> – Municipalities Court fees, surcharges, and fines	<u>(\$1,744,704)</u>	<u>(\$2,093,645)</u>	<u>(\$2,093,645)</u>
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>(\$253,224)</u>	<u>(\$303,868)</u>	<u>(\$303,868)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposal specifies that any circuit court may establish a docket or court to dispose of cases where a person has pleaded guilty to driving while intoxicated or driving with excessive blood alcohol content. A person is eligible for this docket or court if he or she operated a motor vehicle with at least .15 blood alcohol content, or has had a previous conviction for an intoxication-related traffic offense.

The existing Drug Courts Coordinating Commission and the Drug Court Resources Fund are expanded to include DWI courts. DWI courts may operate in conjunction with drug courts and drug court commissioners may preside over DWI courts.

The DWI court has authority to grant a limited driving privilege to participants in the program. The DWI court may not grant the limited driving privilege to individuals who are otherwise prohibited by law from having a limited driving privilege, except certain participants who would have otherwise had their licenses revoked for a year or would not be eligible to apply for a limited driving privilege for two years may be granted a limited driving privilege.

For a first DWI offense, if the individual had a blood alcohol content (BAC) of at least .15, the minimum jail time shall be 48 hours, unless the person participates in a DWI court program. If the individual had a BAC of at least .20, the minimum jail time shall be 5 days, unless the person participates in a DWI court program. If a first-time DWI or driving with excessive BAC offender has a BAC higher than .15, they may not receive suspended imposition of sentence. The minimum jail time for a person who has a prior intoxication-related traffic offense is increased from five to ten days, unless the person participates in the existing community service option, or in the DWI court program. The minimum jail time for a person who is considered a persistent offender is increased from ten to thirty days, unless the person participates in the existing community service option, or in the DWI court program.

Currently, a state, county, or municipal court must determine if a defendant is a prior, persistent, chronic, or aggravated offender with multiple intoxication-related traffic offenses. In such instances, if the court is municipal, after making such a finding, the court shall transfer the case to an appropriate circuit court with jurisdiction for further proceedings. Also, under this act, a municipal court must make a preliminary finding as to whether the defendant was operating a vehicle with a BAC of at least .15 or refused to submit to chemical testing by law enforcement. If either is found by the municipal court, the case shall be transferred to a circuit court with jurisdiction for further proceedings.

FISCAL DESCRIPTION (continued)

Currently, a person who refuses to submit to chemical testing for an intoxication-related offense shall have his or her license revoked for a period of one year. Under this act, the period of revocation is extended to two years.

The proposal requires law enforcement agencies and prosecuting attorney offices to provide relevant information regarding intoxication-related offenses in their jurisdictions to the highway patrol's driving while intoxicated tracking system (DWITS). If such agencies or offices fail to enter the information into DWITS, the governor may withhold its appropriated state funding. The highway patrol shall collect and analyze information received through the DWITS website. At least once per year, the highway patrol shall issue accountability reports regarding agencies and offices compliance with this requirement.

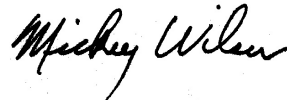
This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Department of Corrections
Department of Revenue
Department of Social Services
Department of Public Safety
 – Director's Office
 – Missouri State Highway Patrol
Office of the State Public Defender
Boone County Sheriff's Department
Springfield Police Department
City of Centralia
Cass County
St. Louis County

NOT RESPONDING

Office of Prosecution Services, Office of the State Treasurer, Buchanan County Sheriff's Department, Clark County Sheriff's Department, Columbia Police Department, Independence Police Department, Jackson County Sheriff's Department, Jefferson City Police Department, Kansas City Police Department, Platte County Sheriff's Department, St. Charles Police Department, St. Joseph Police Department, St. Louis County Police Department, St. Louis Metropolitan Police Department, Various Missouri Cities, and Various Missouri Counties

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 1, 2010